

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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PETER J. TODD,

Civil No. 08-0444 (JRT/FLN)

Plaintiff,

v.

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

MICHAEL J. ASTRUE, *Commissioner of  
Social Security*,

Defendants.

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FRANK LEVIN AND JAMES ROTH, **FRANK W. LEVIN, PA**, 331  
Second Avenue South, Suite 420, Minneapolis, MN 55401, for plaintiff.

Lonnie Bryan, Assistant United States Attorney, **OFFICE OF THE  
UNITED STATES ATTORNEY**, 300 South Fourth Street, Suite 600,  
Minneapolis, MN 55415, for defendant.

The above matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Franklin L. Noel dated February 20, 2009 [Docket No. 35]. No objections have been filed to that Report and Recommendation in the time period permitted.

Based upon the Report and Recommendation of the Magistrate Judge, upon all of the files, records, and proceedings herein, the Court now makes and enters the following Order.

**IT IS HEREBY ORDERED** that:

1. Plaintiff's Motion for Summary Judgment [Docket No. 26] is **GRANTED**; and
2. Defendant's Motion for Summary Judgment [Docket No. 30] is **DENIED**.

3. The Commissioner's decision is **REVERSED** and the case is **REMANDED** to the Secretary for the immediate calculation and award of benefits.

DATED: March 13, 2009  
at Minneapolis, Minnesota.

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s/John R. Tunheim  
JOHN R. TUNHEIM  
United States District Judge